IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 164 OF 2005

STATE,THROUGH PUBLIC PROSECUTOR, PANAJI GOA ....Applicants

Versus

SHAMBA RAMA WARANG AND 4 ORS., ...Respondents

Shri S.N.Sardesai, P.P. for State-Applicant.

Shri J.A. Lobo, Advocate under L.A.S. for the Respondents.

Coram:- N. A. BRITTO, J.

Date:- 18th August, 2005

P.C.:

The State seeks leave to appeal against the acquittal of the accused in C.C. No.47/S/2004 by Judgment/Order dated 29.11.2004 under Sections 143, 147, 148, 341, 323, 427, 504 and 506(ii) r/w 34 of I.P.C.

2. The case of the prosecution was that on 20.1.04 at 17.15 hrs. at Purva, Kesarvarnem, Pernem, the accused in furtherance of their common object, had formed an unlawful assembly and armed with dandas had wrongfully restrained the complainant Shri Dharma Warang and eight others and assaulted them with dandas, slaps and kicks, causing them simple injuries and also abused them with filthy words and threatened them with dire consequences. It was also stated that during the scuffle Mrs. Dropadi Warang and Mrs. Anjali Warang lost their mangalsutras, causing loss to them to the tune of Rs. 30,000/-. In support of the case of the prosecution, ten witnesses were examined. It appears that the incident took place between two groups, the group of the complainant Dharma Warang being that of nine persons, while the group of the accused being of five persons. Amongst the prosecution witnesses examined, P.W.2

Jaganath Palyekar and P.W.3 Madhu Parab appear to be the only outsiders who were examined as panch witnesses. The medical evidence was produced under S.294 of Cr.P.C. through P.W.10 the Head Constable. As far as the injuries are concerned, the learned J.M.F.C. has observed that the medical certificate (Exh.PW.10/A) showed only an injury on the person of P.W.5 Droupadi Warang, but that was not at the place which the said Droupadi Warang claimed she was assaulted. As far as the abuses and threats are concerned, the learned J.M.F.C. has observed that neither the complainant P.W.1 Dharma nor the other witnesses who were examined described the type of abuses or the type of threats allegedly given to them and thus the prosecution had failed to prove the offences punishable under Sections 323, 504 and 506(ii) r/w 149 I.P.C. As far Section 427 I.P.C. is concerned, it appears that the mangalsutras were lost in the scuffle or melee which took place between the group of the complainant and the group of the accused and obviously therefore Section 427 I.P.C. could not have been attracted. It appears that P.W.5 Droupadi and P.W.8 Anjali did state that the mangalsutras were seen in the hands of accused No.1 Shamba, but that was a clear case of improvement as the said mangalsutras were not recovered by the Investigation Officer from the said prosecution witnesses.

3. Considering the facts of the case as stated by the prosecution witnesses and considering that the incident took place between the two groups of the complainant and the accused, the acquittal of the accused could not be said to be unjustified.

4. I find there is no merit in this case to grant leave to appeal to the State. Hence the application is hereby rejected.

N. A. BRITTO, J.